

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

MONTGOMERY COUNTY,)
ILLINOIS,)
)
Complainant,)
)
v.) AC 92-24
) (MCHD 9201-AC-1)
) (Administrative Citation)
WHITE & BREWER TRUCKING,)
INC.,)
)
Respondent.)

ORDER OF THE BOARD (by J.C. Marlin):

The Board closed this docket by entry of a default order on May 7, 1992. On May 26, 1992, the Board received a letter from counsel which states:

Our office represents White & Brewer Trucking, Inc. They received an order of the Board on May 7 which indicates no petition from the original citation was filed.

On behalf of White & Brewer I prepared a petition, a copy of which is enclosed, and mailed it per the proof of service. Also from my file I can't prove by certified mail receipt that we mailed this petition, however, seldom do we use certified mail. Nor do I believe it was required in this case. My only thought was that our letter was misrouted somewhere along the way.

A "cc" notation indicates that this letter was sent to the County, the Agency, and the respondent.

By order of June 23, 1992, the Board noted that the Office of the Board's Clerk has no record of receipt of this petition.

In response to directions in that order, on July 2, 1992 respondent filed an affidavit in support of its earlier motion. The County filed a response on July 22, 1992, supported by its own affidavit as well as one submitted by the Agency.

The respondent's April 14, 1992 certificate of service indicates that the petition was served on the Board, the County, and the Agency. In his July 2, 1992 affidavit, respondent's counsel states:

Our mail is prepared throughout the day and regularly delivered to the post office in Hillsboro between 5:00

0135-0205

p.m. and 5:15 p.m. daily. I did not personally deliver the mail to the post office, however, this is done under my supervision. To the best of my knowledge standard procedure was followed and the petition and certificate mailed.

The County states:

That respondent has searched the appropriate files at the office of the Montgomery County State's Attorney and has been unable to locate any Petition for Administrative Review or Certificate of Service which respondent represents it mailed on or about April 14, 1992.

That although complainant is unable to locate copies of the Motion to Reconsider and Petition for Administrative Review in her files, complainant acknowledges that such pleadings may have been received and misfiled in her office.

That the appropriate officer of the Illinois Environmental Protection Agency searched its records at the request of Attorney for the Complainant, and that the Agency was unable to locate a copy of the Petition for Administrative Review, represented to be mailed by the respondent on or about April 14, 1992.

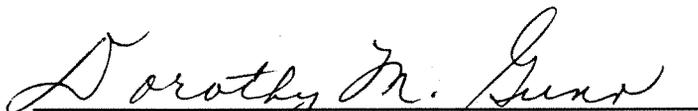
This case is unusual in that none of the person listed on the certificate of service have received the petition for review. Section 101.144(c) of the Board's procedural rules "Effective Date of Service" provides that "[t]here is a rebuttable presumption that service by First Class mail is complete four days after mailing". All evidence in this case is that service was never made. The Board might be inclined to give respondent the benefit of the doubt if only the Board were to have failed to receive the petition,¹ in light of mail disruption in the Chicago area due to the Chicago flood, which began April 13, 1992. However, since no one received the mailing, it would appear that, whether in respondent's office or in the Hillsboro post office, standard procedures were not followed. The 35 day appeal period established by Section 31.1(d) of the Act is jurisdictional, the Board may not enlarge its appellate jurisdiction beyond that granted by statute. Landfill, Inc. v. IPCB (1978) 74 Ill. 2d 541, 387 N.E. 2d 258. Under these circumstances, the Board declines to reopen this case.

IT IS SO ORDERED.

¹See County of Jackson v. Leslie Norman Fred Sr. (July 30, 1992), AC 92-39, reopening the case when the County, but not the Board, received a timely filed petition for review.

Section 41 of the Environmental Protection Act (Ill. REV. Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 30th day of July, 1992, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board